IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Prem Shankar. Versus Smt. Rekha & Anr.

S.B. Criminal Revision Petition No.307/2007

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Date of Order: July 17, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

None present for the petitioner.

BY THE COURT:

No one appears for the petitioner even in the second round.

Perused the memo of the revision petition filed by petitioner Prem Shankar under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) challenging the judgment dated 8-2-2007 passed by the Judge, Family Court, Udaipur (for short, "the Family Court" hereinafter).

I have carefully gone through the impugned judgment.

Respondent No.1 Smt. Rekha is the legally wedded wife of the petitioner and respondent No.2 is the minor daughter of the petitioner. This fact has not been denied by the petitioner

before the Family Court.

Respondent No.1 Smt. Rekha filed an application under Section 125 of the Code on her own behalf and on behalf of her minor daughter respondent No. 2 Miss Gayatri claiming monthly allowance of maintenance against the present petitioner before the Family Court, being Case No. 435/2004, alleging therein that the respondent No.1 married to the petitioner nine years ago according to Hindu customs and rites and from this wed-lock, a daughter was born four years ago. After sometime of the marriage, the petitioner used to assault the respondent No.1 and also used to abuse her and ultimately she was turned out from the matrimonial home along with the minor daughter in connection with demand of dowry. The respondent No.1 was asked to bring Rs.1.5 lac from her parents as the dowry. At that time, the respondent No.1 was pregnant and subsequently she gave birth to a child, i.e. the respondent No.2. It has been stated in the application that the petitioner, despite having sufficient means, failed to maintain and neglected the respondents and, therefore, claimed monthly allowance of maintenance for herself and her minor daughter. It has been stated that the petitioner is running a hotel at Mumbai and earns Rs.50,000/- per month.

A reply to the petition was filed by the petitioner denying the allegation of demand of Rs.1.5 lac as dowry and it

has been stated that the respondent No.1 used to harass the mother of the petitioner and the respondent No.1 wanted to live separately from petitioner's mother whereas the petitioner cannot afford to live with the respondent No.1 ignoring his mother. It has further been stated that the respondent No.1 is undertaking tuitions and is also running a Beauty Parlour.

On the basis of pleadings of the parties, the Family Court framed 3 issues. Both the parties produced evidence. The respondent No.1 herself appeared as AW 1 and produced AW 2 Ramlal. The petitioner appeared as NAW 1 and produced NAW 2 Narain Lal. The Family Court, on appreciation of the evidence produced before it, came to the conclusion that the income of the petitioner is Rs.2000/- to Rs.2500/- per month and keeping the need of the respondents, a sum of Rs.600/- per month in favour of respondent No.1 and a sum of Rs.400/- per month in favour of respondent No.2, the minor daughter, were granted as the maintenance. Hence this criminal revision petition.

By the order dated 13-4-2007 passed by this Court, the petitioner was directed to pay Rs.7000/- to the respondents immediately and file the receipt ascertaining the fact of giving aforesaid money to the respondents before this Court within a period of two weeks. No such receipt has been filed so far, though almost the period of three months has elapsed therefrom.

I have gone through the judgment and order impugned. The witness produced by the petitioner, viz. NAW 2 Narain Lal has not been believed by the trial Court and in my view, rightly so. He is not a witness to the Beauty Parlour shop alleged to have been run by the respondent No.1, nor about the alleged tuitions undertaken by the respondent No.1. The witness has admitted that respondent No.1 is only V Class Passed. A person having the educational qualification of V Class, whether she can undertake tuitions and face the standard for tuitions, has been considered by the Family Court and the Family Court held that the witness has appeared only in order to support the petitioner though he has no personal knowledge about the alleged vocation.

The petitioner did not say anything about the income of the respondent No.1 and only stated that the respondent No.1 goes for beauty parlour. He has not stated where that shop is situated and in what name and style.

Thus, the statements of the respondent No.1 and the witnesses AW 2 Ramlal produced by her was relied upon by the Family Court to the extent that the petitioner, despite having sufficient means, failed to maintain and neglected the respondents.

So far as the income of the petitioner is concerned, though the respondent No.1 came with the case that the

petitioner is earning Rs.50,000/- per month from the hotel run by him in Mumbai, however, the Family Court observed that the petitioner is working at Mumbai but not in his own hotel and his monthly income has been determined at Rs.2000/- to Rs.2500/- and the Family Court awarded the monthly allowance of maintenance @ Rs.600/- in favour of respondent No.1 and Rs.400/- in favour of respondent No.2. In my view, the conclusion arrived at by the Family Court cannot be said to be erroneous or illegal. The judgment passed by the Family Court is based on proper appreciation of the evidence. So far as monthly allowance of maintenance is concerned, to maintain an adult person i.e. respondent No.1, a sum of Rs.600/- per month cannot be said to be excessive; so also to maintain a child, a sum of Rs.400/- per month cannot be said to be excessive.

In this view of the matter, I do not find any merit in the revision petition and it is dismissed accordingly.

(H.R. PANWAR), J.

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